IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

Crl.MC.No. 1717 of 2007()

CC.959/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, NEYYATTINKARA
CRIME NO.43/03 OF THE KOVALAM POLICE STATION.

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PETITIONER: 2ND ACCUSED

B.SURENDRA DAS, S/O LATE BHANU PANICKER,
SREE VISAKH, VANDITHADAM, PACHALLOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
KOVALAM POLICE STATION, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI.M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1717 OF 2007

Dated this the 12th day of June, 2007

ORDER

The petitioner is the 2nd accused in a prosecution under Sec.56(b) of the Kerala Abkari Act. Altogether, there are three accused persons. The 1st accused is alleged to be a licensee and the 3rd accused is alleged to an employee of the said toddy shop. There is an allegation that the petitioner has taken over the shop of the 1st accused and is running the same and the 3rd accused had committed the offence with the knowledge and consent of the other accused. The petitioner has come to this Court with a prayer that the powers under Sec.482 of the Cr.P.C. may be invoked to prematurely terminate the proceedings against the petitioner. The short contention raised by him is that Sec.56 of the Abkari Act can apply only to a licensee or an employee of the licensee. He is neither. Hence the proceedings against him may be quashed,

it is prayed.

2. Sec.56 of the Abkari Act is not confined in its operation against the licensee. It takes in person being the employee of such licensee and acting on his behalf. Whether the allegation is acceptable or not is a totally different question. But at the moment, it cannot be assumed that there are no allegations against the petitioner to justify the charge under Sec.56(b) of the Abkari Act. The prayer for quashing on that ground cannot, in these circumstances, succeed.

3. The learned counsel for the petitioner then submits that no materials have been placed before the learned Magistrate in the final report under Sec.173 of the Cr.P.C. and, in these circumstances, it is prayed that the powers under Sec.482 of the Cr.P.C. may be invoked.

4. The copy of the report under Sec.173 of the Cr.P.C. is not placed before this Court. The materials available along with the report under Sec.173 of the Cr.P.C. are not revealed to this Court. At the moment, the allegations justify the raising of a charge under Sec.56(b) of the Abkari Act. Whether there are materials to proceed further or not will certainly have to be considered by the learned Magistrate at the stage when the

petitioner appears and the learned Magistrate thinks of reading over the particulars of the offence to the petitioner.

5. If the learned Magistrate feels that there is no material to justify further proceedings against the accused and no offences are revealed particulars of which should be read over to the accused, needless to say, the learned Magistrate can resort to the powers under Sec.258 of the Cr.P.C. to bring about premature termination of the proceedings.

6. This Crl.M.C. is, in these circumstances, dismissed; but with the specific observation that the dismissal of this petition will not in any way fetter the rights of the petitioner to claim stopping of the proceedings under Sec.258 of the Cr.P.C.

(R. BASANT, JUDGE)

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